

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLY FULBRIGHT, et al.,

Plaintiffs,

v.

DAYTON SCHOOL DISTRICT
NO. 2, et al.,

Defendants.

NO: 13-CV-0030-TOR

ORDER GRANTING VOLUNTARY
DISMISSAL WITHOUT PREJUDICE

BEFORE THE COURT is Plaintiff's Notice of Voluntary Dismissal
Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) (ECF No. 11).

PROCEDURAL HISTORY

Plaintiffs filed this action on January 16, 2013. ECF No. 1. On February 12, 2013, Defendants Dayton School District No. 2, Educational Services District No. 112, Douglas Johnson and Larry Bush (the "School Defendants") filed a motion to dismiss for failure to state a claim. ECF No. 5. This motion sought dismissal of Plaintiffs' causes of action for (1) violation of A.F.'s right to be free

1 from unreasonable seizure under the Fourth Amendment; (2) violations of A.F.'s
2 right to substantive due process under the Fourteenth Amendment; Title IX
3 violations asserted by Plaintiffs Kelly and Jeri Fulbright; (2) Title IX violations
4 asserted against Defendants Douglas Johnson and Larry Bush in their individual
5 capacities; (5) reckless and wanton misconduct; (6) respondeat superior; and (7)
6 violations of the Washington Sexual Exploitation of Children Act. ECF No. 5.
7 The School Defendants did not seek dismissal of Plaintiffs' state law claims for
8 negligent hiring, training and supervision. Defendants Columbia County Public
9 Transport, Karen Zink, and John and Jane Does 1-10 did not join in the School
10 Defendants' motion to dismiss.

11 The Court granted the School Defendants' motion on April 10, 2013,
12 dismissing the following claims with prejudice: (1) Fourth Amendment claim; (2)
13 Title IX claims asserted by Mr. and Mrs. Fulbright; (3) Title IX claims asserted
14 against Defendants Johnson and Bush in their individual capacities; (4) violations
15 of the Washington Sexual Exploitation of Children Act stemming from conduct
16 after A.F.'s eighteenth birthday in December 2011; and (5) causes of action (to the
17 extent they were pled as such) for reckless and wanton misconduct and respondeat
18 superior. ECF No. 9. The Court further dismissed the following claims with leave
19 to amend within fourteen days: (1) substantive due process (deliberate
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1 indifference) claims; and (2) violations of the Washington Sexual Exploitation of
2 Children Act stemming from pre-December 15, 2011 conduct. ECF No. 9.

3 As of the date of this Order, Plaintiffs have not amended their Complaint.
4 Accordingly, the only claims presently before the Court are (1) all claims against
5 Defendants Columbia County Public Transport, Karen Zink, and John and Jane
6 Does 1-10; and (2) Plaintiffs' state law claims against the School Defendants for
7 negligent hiring, training and supervision.

8 Because no Defendant has filed an answer or a motion for summary
9 judgment, Plaintiffs have an absolute right to voluntarily dismiss these remaining
10 claims. *Concha v. London*, 62 F.3d 1493, 1507 (9th Cir. 1995). The fact that the
11 School Defendants previously filed a successful motion to dismiss does not appear
12 to deprive Plaintiffs of this right. *See id.* ("Even if the defendant has filed a motion
13 to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of
14 dismissal under Rule 41(a)(1)."). Whether Plaintiffs may re-file any of the
15 dismissed claims in state court remains an open question; however, the Court
16 cannot rule on this issue since it no longer has jurisdiction over these claims.

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IT IS HEREBY ORDERED:

All remaining claims and causes of action in this matter are **DISMISSED** without prejudice and without costs or fees to any party.

All pending hearings are vacated.

The District Court Executive is hereby directed to enter this Order, furnish copies to counsel, and **CLOSE** the file.

DATED April 26, 2013.



Thomas O. Rice
THOMAS O. RICE
United States District Judge